

United States District Court
Western District of Texas
San Antonio Division

Joe Holcombe, et. al,
Plaintiffs,

v.

United States of America,
Defendant.

No. 5-18-cv-00555-XR
(consolidated cases)

**DEFENDANT UNITED STATES' RESPONSE TO PLAINTIFFS' OPPOSED MOTION
FOR ORDER REFERRING CASE TO MEDIATION**

Plaintiffs reached out to the United States less than two hours before filing their Opposed Motion for Order Referring Case to Mediation on Friday, October 22, 2021. Plaintiffs' counsel sent the proposed motion to government counsel handling the damages trial. The United States' defense of this case—including settlement related matters—is being jointly handled by Department of Justice (DOJ) attorneys in the United States Attorney's Office and in the Civil Division. Counsel for the United States did not have time to confer between each other to provide a substantive response before Plaintiffs filed their motion. The United States files this Response to correct and clarify two points made in the Plaintiffs' motion.

First, Plaintiffs' motion states that the DOJ requested Plaintiffs to submit a second round of information, and Plaintiffs promptly complied. Doc. 557 at 2. It is unclear to the United States what second round of information was provided, as the attorneys for the DOJ have not received any recent update of Plaintiffs' demand. If the information referenced by Plaintiffs was that provided over a year ago, the government did receive information at that time, but no recent updates have been provided despite known changes in the factual circumstances of the case and a more recent discussion about Plaintiffs providing an updated demand.

Second, and more significantly, Plaintiffs' state in the motion that "conversations stalled once DOJ informed Plaintiffs' counsel that regardless of what Plaintiffs offered, no person with authority would present an offer on behalf of the Government." *Id.* DOJ did not make that statement to Plaintiffs' counsel. That statement does not reflect the position of the United States. The United States' position is that, while it may ultimately decide not to engage in formal settlement discussions, it is always willing to consider settlement demands.

The United States received an associated text order from the Court taking this matter under advisement and stating that a representative should contact United States Magistrate Judge Chestney's chambers by close of business Monday to discuss whether a mediation session is appropriate. On Monday October 25, 2021 at 10:59 am, the United States Attorneys Office received, by ECF, Docket #561, an Order by Magistrate Judge Chestney setting a teleconference to discuss the parties "positions on whether a mediation could be productive at this juncture and their positions regarding the structure and schedule for any mediation." The United States will appear as ordered at the teleconference prepared to give its position.

Signature page follows

Respectfully submitted,

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